

the power to fix that day; and if that enforces a change in the day of electing members of Congress, it is by the will of the Legislature, and not of this Convention. I admit that the provision is utterly nugatory in itself. It is simply put in for the purpose of explaining what is the necessary effect of the action of the Legislature.

Mr. CLARKE. If this is surplusage, put in here for no purpose whatever, if it is in a wrong place, an improper place, why not strike it out? There must be some reason behind, for putting it in.

Mr. CUSHING. I will give the gentleman a reason; that it will prevent the Legislature from changing the day which they have already fixed.

Mr. CLARKE. The Legislature have the right to change the day; for the Constitution of the United States says expressly that the Legislature shall regulate this. They can repeal that law.

Mr. CUSHING. Not if this is adopted.

Mr. CLARKE. This shows that gentlemen had, as I supposed, some object. I have no doubt that they thought they had a right to exercise that power. But if the gentleman is correct, it is to my mind a reason for striking this out. It is putting into our Constitution something prohibited by the Constitution of the United States, and is therefore nugatory, and should be stricken out. It is undertaking to legislate in reference to the provisions of this Code. So far as the Constitution comes in conflict with the Code, it repeals it. Under the Constitution of the United States it has not the power in this respect to repeal the action of the Legislature. The Legislature having fixed the day upon which the election shall be held, you cannot change that day. What harm will it do to leave it to the Legislature? We are to have a Legislature this fall. If it is desirable that an election should take place preceding the expiration of the term of office, the Legislature can provide for it, and fix whatever time they may think proper. It is their constitutional duty. If there should be a vacancy, a special session may be called by the Governor. We have no right to interfere with the question.

Mr. CHAMBERS. I suppose there is hardly any member of this body that desires to usurp any power which the Constitution of the United States has expressly and exclusively granted to the Congress of the United States. Now, the Constitution of the United States expressly declares that the Congress of the United States shall have power to name the day of election. Yet we are undertaking here by our Constitution to say what shall be the day. If this is not an express assumption of the exclusive power of the General Government, I defy any gentleman to name an instance in which such assumption can be made. If the Congress of the United States

has delegated this power to the State Legislature, this clause is one which should not be admitted. They may revoke that whenever they please; and what would be the condition of things then? The Congress of the United States, by virtue of power secured to them by the Constitution under which they exist, would name one day; and the Constitution of the State of Maryland, which we are now making, would name another day for the election of congressmen. Certainly the clause in our Constitution would be a mere idle effort to control a matter not within our jurisdiction. If the Legislature, under the grant of power which has been made to them by the Congress of the United States, in virtue of their authority under the Constitution of the United States, should choose, after the adoption of this Constitution, to name another day, I say as a lawyer that this Constitution does not prohibit the Legislature from doing it. We can confer no power upon the Legislature in this respect. We can take no power from them which the Congress of the United States may grant. Any power which they exercise on the subject, is derived, not from the people of this State, or from the Constitution, which is their express will—or ought to be—for I believe this is very far from it, so far as we are gone—but is derived from the people of the United States through the Constitution of the United States.

I think, therefore, the power not belonging to us, that this is an idle attempt to enact a useless provision into this Constitution. But it is not only useless. It may be mischievous. I think gentlemen who propose to keep it here, because it is a harmless, inoffensive provision, make a mistake. There is a certain contingency in which our Governor is authorized to change this date, or the State would be unrepresented. Will the Governor of the State, with the Constitution staring him in the face and declaring that the election of congressmen shall be on the first Tuesday after the first Monday of November, dare to violate that Constitution by ordering an election at any other day? I say that under this provision he will violate the Constitution, if he appoints any election on any other day. He has no authority. The Congress of the United States could say that the Governor might fix the day. They have the power, and they can delegate it. But their delegate cannot delegate; or else the Governor might appoint some individual in turn to name some other day. The Congress of the United States have named the Legislature, and no other person, no other body corporate, no other individual. I say, therefore, that the effect will be mischievous.

Now, then, I ask another question; and if it cannot be answered satisfactorily, it is a very sufficient reason for omitting this provision. I say it does no good on the face of the earth, and if it is to have no practical effect,